

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2041 OF 2016

Lolarakhnath Matadin Mishra and anr. .. Petitioners

vs.

The State of Maharashtra and ors. .. Respondents

Mr. A.G. Damle, Senior Advocate i/b Ms Snehal Singh for the Petitioners.

Ms Aparna Vhatkar, AGP for Respondent No.1- State.

Mr. Manoj G. Sawardekar a/w. Mr. Y. Gogari for the Respondent No.2.

Mr. Simil Purohit for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 17 FEBRUARY 2016.

P.C. :-

1] The challenge in this petition is to the orders dated 4 November 2015 and 6 February 2016 made by the Deputy Collector and Additional Collector under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

2] Mr. A.G. Damle, learned senior advocate for the Petitioners, has submitted that initial notice under Sections 33 and 38 of the Slum Act was never issued to the Petitioners, but the same was issued to one Mr. Lalit Mishra, who occupies the ground and first floor structure. It is the case of the Petitioners that they occupy the first floor structure as also the structure above the same, since last

many years. Accordingly, Mr. Damle submitted that there is breach in compliance with principles of natural justice and fair play. That apart, he submitted that the case of the Petitioners with regard to their eligibility has not even been considered by the two Authorities, but the same has merely brushed aside on the sole ground that they occupy the space above the ground floor of the suit structure. For these reasons, Mr. Damle submitted that the impugned orders warrant interference.

3] If the facts and circumstances of the present case are perused, there is no merit in the submissions based upon any alleged failure in compliance with the principle of natural justice and fair play. It may be true that the notice for demolition was issued in the name of Lalit Mishra. However, the Petitioners applied for and were permitted to intervene in the proceedings before the Deputy Collector. The case of the Petitioners was duly considered by the Deputy Collector and only thereafter, the impugned order dated 4 November 2015 was made. Further, the Petitioners instituted a substantive appeal before the Additional Collector, which was, again duly considered by the Additional Collector. In view of all these facts, there is no case made out to interfere with the impugned orders on the grounds of any alleged failure in the compliance with

the principles of natural justice and fair play.

4] The Deputy Collector and the Additional Collector, whilst exercising the powers under Sections 33 and 38 of the Slum Act, are not required to go into the issue of eligibility of the Petitioners to avail the benefits of the redevelopment scheme. Besides, Mr. Damle submits that it is the case of the Petitioners that the areas of which they are in occupation, are not slum areas at all and therefore, not a part of slum rehabilitation scheme. On the basis of material on record, it cannot be said that the impugned orders are in excess of jurisdiction. The Petitioners, till date, have not applied to any Authority, either to question the slum rehabilitation scheme or to pronounce upon their eligibility to avail the benefits of the scheme.

5] Accordingly, this petition is dismissed. There shall, however, be no order as to costs.

6] However, it is made clear that none of the observations in this order are intended to prejudice the contentions of either parties in the context of the challenge which the Petitioners propose to raise to the slum redevelopment scheme itself. Accordingly, all contentions of all parties in this regard are kept open.

(M. S. SONAK, J.)